

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONTE MCCLELLON,

Plaintiff,

v.

CAPITAL ONE BANK, NA, *et al.*,

Defendants.

Case No. 19-cv-446-RAJ

ORDER GRANTING MOTION
FOR SERVICE

This matter comes before the Court on Plaintiff's Motion for Service. Dkt. # 7. The Motion is unopposed. For the reasons that follow, the Court **GRANTS** Plaintiff's Motion. Dkt. # 7.

I. BACKGROUND

On March 26, 2019, Plaintiff Donte McClellon filed this action against Defendants Capital One Bank, Kellen Andrew Hade, and Miller Nash Graham & Dunn LLP. Dkt. # 1-1. Plaintiff also submitted an application to proceed *in forma pauperis*. Dkt. # 1. On March 27, 2019 the Honorable Michelle L. Peterson granted the application. Dkt. # 4. Plaintiff now moves for service pursuant to Fed. R. Civ. P. 4(c)(3). Dkt. # 7.

II. DISCUSSION

Under 28 U.S.C. § 1915(e)(2), the Court is required to review an action filed pursuant to the IFP provision of § 1915 before directing the U.S. Marshal to effect service pursuant to Fed. R. Civ. P. 4(c)(3). *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim). “[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to

1 the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). Where a plaintiff
2 proceeds *pro se*, the Court must construe the plaintiff’s complaint liberally. *Johnson v.*
3 *Lucent Techs. Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011) (citing *Hebbe v. Pliler*, 627 F.3d
4 338, 342 (9th Cir. 2010)).

5 The Court finds that the claims found in Plaintiff’s Complaint are sufficiently
6 pleaded to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2).
7 Plaintiff is cautioned, however, that “the sua sponte screening and dismissal procedure is
8 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a
9 defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.
10 Cal. 2007).

11 III. CONCLUSION

12 For the foregoing reasons, Plaintiff’s Motion for Service is **GRANTED**. Dkt. # 7.

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14 DATED this 23rd day of October, 2019.

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17 The Honorable Richard A. Jones
18 United States District Judge
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